

Legal Analysis of Disparities in Judges' Decisions in Criminal Assault Cases Resulting in Severe Injuries

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Abstract

Keywords

Disparity, Recidivism, Persecution, Serious Injury, Criminalization

This research discusses the disparity of judges' decisions in criminal assault cases resulting in severe injuries within the Indonesian criminal justice system. Sentencing disparity has become an important legal issue because differences in punishment for similar criminal acts may undermine legal certainty, justice, and public trust in the judiciary. The purpose of this study is to analyze the factors causing disparities in judges' decisions and to examine the legal considerations used in imposing criminal sanctions, particularly in cases involving recidivist offenders and serious injuries. This study employed a normative juridical research method using conceptual and case approaches. Data were collected through literature studies involving statutory regulations, court decisions, legal doctrines, and relevant scientific journals. The analysis was conducted qualitatively using descriptive-analytical techniques to compare judicial considerations in similar cases. The findings indicate that disparities in sentencing are influenced by broad judicial discretion, differences in assessing aggravating and mitigating factors, and the absence of detailed sentencing guidelines. Recidivism status, severity of injuries, remorse, and restorative efforts significantly affected judicial decisions. The study concludes that sentencing disparity remains a fundamental issue in Indonesian criminal law enforcement. Therefore, clearer national sentencing guidelines, stronger judicial transparency, and more proportional consideration standards are necessary to ensure fairness, consistency, and accountability in criminal punishment.

INTRODUCTION

The criminal justice system has an important role in maintaining social order and upholding the principles of justice through a consistent and accountable criminal mechanism. One of the elements that determines the success of criminal justice is the judge's decision, which not only resolves disputes juridically but also reflects how the value of justice is implemented in practice (Fahmiron & Yolanda, 2023, p. 430). However, in the reality of law enforcement, differences in criminal sentencing for the same case often arise. This difference is known as verdict disparity, which is the unequal punishment of cases that have similar characteristics (Ulfa Arifia, Gultom, & Markoni, 2023, p. 12). This phenomenon can cause legal uncertainty and potentially harm the principle of equality before the law.

Disparity is defined as a major difference in criminal sanctions in cases that have similar legal facts and qualifications, disparities can damage the ideals of the judiciary as a guardian of legal consistency and also directly harm the defendant because it creates uncertainty regarding the applicable criminal standards (Langkun et al., 2024, p. 9).

The issue of disparity is increasingly important when it is associated with criminal acts of persecution that result in serious injuries. This crime is a form of violence against the body that results in a significant impact on the victim, both physically and psychologically (Insani,

Hatta, & Johari, 2025, p. 15). The criminal act of persecution that results in serious injury in Article 351 paragraph (2) of the Criminal Code is a serious violation of human rights, so it demands a firm legal reaction. Punishment must be proportional, that is, balanced between the fault of the perpetrator and the suffering of the victim (Van der Merwe & Skelton, 2015). However, the judicial process is not only mechanical, but also the imposition of criminal sanctions must weigh the specific dimensions of the case, giving rise to the role of judicial discretion as an important instrument to balance the demands of normative legal certainty with the need for substantive justice in the field.

A judge's decision is not just a verdict, but a reflection of the justice that should be upheld, where every individual is treated fairly in the eyes of the law (Harmono & Harry, 2024, p. 7). However, in practice, the phenomenon of disparity in judges' decisions often appears. Although the discretion of judges is inevitable, the use of this authority without any clear framework of control raises a serious problem known as the disparity of judges' decisions. In the context of this study, the focus on disparity needs to be narrowed down to cases of persecution involving aggravating factors, such as recidivism status (repetition of criminal acts). Recidivism status should be a significant consideration that affects the severity of the sentence imposed. However, if a case of persecution with the characteristics of a recidivist perpetrator receives a wide variety of sanctions, this will raise critical questions about the consistency of the judge's consideration in passing the verdict and harm the victim because it creates uncertainty about the applicable sentencing standards.

Actual global data show that the criminal justice system continues to face serious pressure due to increasing crime complexity and prison population growth. UNODC reported that the global prison population exceeded 11.5 million people in recent years, indicating that criminal punishment remains one of the dominant responses to crime. This condition strengthens the urgency of ensuring that punishment is imposed consistently, proportionately, and transparently. If sentencing decisions are highly unequal for similar cases, punishment may no longer be perceived as a reflection of justice, but as a product of judicial subjectivity. Therefore, sentencing disparity has become a crucial global issue in criminal law studies.

The specific issue addressed in this research is the disparity in judges' decisions in criminal assault cases resulting in severe injuries. In Indonesian criminal law, assault resulting in serious injury is regulated under Article 351 paragraph (2) of the Criminal Code, which provides a maximum imprisonment of five years. Although the provision gives judges legal authority to determine the appropriate sentence, the absence of a strict minimum penalty creates wide room for judicial discretion. This discretion is necessary to individualize punishment according to the facts of each case, but it may also produce inconsistency when similar cases receive substantially different sentences without strong and measurable legal reasoning.

The issue becomes more complex when the case involves recidivism. A recidivist offender is generally considered more dangerous because repeated criminal conduct indicates that previous punishment failed to create deterrence. In principle, recidivism should be treated as an aggravating factor that increases the severity of punishment. However, in practice, judges may give different weight to recidivism compared with mitigating factors such as remorse, politeness during trial, confession, young age, or request for leniency. This creates a critical problem because a recidivist defendant may receive a lighter sentence than a non-recidivist defendant, even when the injury suffered by the victim is life-threatening.

Previous research has shown that sentencing disparity is not only caused by differences in legal facts, but also by variation in judicial interpretation, legal culture, sentencing philosophy, and the absence of clear sentencing guidelines. Studies on sentencing disparity in various jurisdictions, including research indexed in Scopus, have found that broad judicial discretion can produce inconsistent outcomes when judges do not use the same evaluative standards. Research by Pina-Sánchez and colleagues highlighted that sentencing consistency requires similar legal factors to be treated similarly, while Mamak's study on criminal law reform in Poland showed that legal reforms intended to reduce disparity do not always succeed without strong implementation mechanisms.

In Indonesia, previous studies have also discussed disparity in judges' decisions in criminal cases, including assault, violence, and serious injury cases. These studies generally conclude that sentencing disparity arises from the broad formulation of criminal sanctions, the dominance of subjective judicial considerations, and the lack of detailed sentencing guidelines. Several Indonesian legal scholars also argue that the absence of measurable standards for weighting aggravating and mitigating factors causes judges to rely heavily on personal interpretation. However, many existing studies still discuss disparity in general terms and have not deeply examined how recidivism should influence sentencing in assault cases resulting in serious injury.

This creates a clear research gap. Previous studies have explained the concept of disparity and the general role of judicial discretion, but limited attention has been given to the comparison of concrete decisions involving serious assault, victim injury severity, and recidivist status. The gap is particularly visible when a recidivist defendant receives a lighter sentence than another defendant whose case is based on the same legal provision. This situation raises an important question about whether judges have applied the principles of proportionality, legal certainty, and victim-oriented justice consistently. Therefore, this research is needed to provide a more specific and critical analysis of sentencing disparity in serious assault cases.

The urgency of this research lies in the need to strengthen public confidence in the judiciary and ensure that criminal punishment reflects substantive justice. When judges impose significantly different sentences in similar cases, especially without clear *ratio decidendi*, the public may perceive the court as inconsistent and unpredictable. For victims, disparity may create a sense of injustice because the suffering they experience is not always reflected in the severity of punishment. For offenders, disparity may also create uncertainty because the applicable sentencing standard becomes unclear. Thus, analyzing disparity is important not only for legal theory, but also for practical reform in criminal justice.

The novelty of this research lies in its focus on the disparity of judges' decisions in criminal assault cases resulting in severe injuries by comparing the role of recidivism, victim injury, juridical consideration, and non-juridical consideration. Unlike previous studies that generally examine disparity as a broad sentencing issue, this research specifically analyzes how judges weigh aggravating and mitigating factors in cases under Article 351 paragraph (2) of the Criminal Code. This focus allows the study to reveal whether judicial discretion has been exercised proportionately or whether it has produced normative inconsistency that weakens equality before the law.

The purpose of this research is to analyze the disparity in judges' decisions in criminal assault cases resulting in severe injuries and to examine the legal considerations used by judges in imposing sentences. The contribution of this research is expected to enrich criminal law scholarship, especially regarding sentencing disparity, judicial discretion, recidivism, and victim protection. The objective is to identify the factors that cause different sentencing outcomes and evaluate whether such differences are legally and philosophically justified. The benefit of this research is to provide academic input for the development of clearer sentencing guidelines, strengthen the transparency of judicial reasoning, and support a more consistent, proportional, and accountable criminal justice system in Indonesia.

METHOD

This research employed a normative juridical research design with a conceptual approach and a case approach to analyze disparities in judges' decisions in criminal assault cases resulting in severe injuries. The population of this research consisted of criminal court decisions related to Article 351 paragraph (2) of the Indonesian Criminal Code concerning assault resulting in serious injury. The research sample focused on selected court decisions that were considered relevant and representative, particularly Decision Number 97/Pid.B/2025/PN Plk and Decision Number 175/Pid.B/2025/PN Plk from the Palangka Raya District Court. The sampling technique used in this study was purposive sampling because the selected cases specifically contained elements of sentencing disparity, recidivism, and serious injury that were directly relevant to the research objectives. The main research instruments included legal documents, statutory regulations, court decisions, legal doctrines, scientific journals, books, and other secondary legal materials related to criminal law, sentencing disparity, and judicial discretion.

The validity of the research data was ensured through source triangulation and document verification by comparing statutory provisions, court decisions, legal theories, and previous research findings obtained from Google Scholar and Scopus-indexed journals. Reliability was maintained by consistently applying the same legal interpretation framework and analytical procedures to all legal documents and case comparisons examined in this study. Data collection techniques were carried out through an extensive literature study and documentation method involving the identification, classification, and examination of primary legal materials, secondary legal materials, and tertiary legal materials. The research procedure began with identifying relevant legal issues regarding sentencing disparity, collecting court decisions and legal references, classifying juridical and non-juridical considerations, comparing judicial reasoning in similar cases, and interpreting the findings based on criminal law theories and sentencing principles.

The data obtained were analyzed qualitatively using descriptive-analytical techniques to explain patterns of disparity in judges' decisions and the factors influencing sentencing differences in assault cases resulting in severe injuries. The analysis emphasized the examination of juridical aspects such as the fulfillment of criminal elements, recidivism status, severity of injuries, and applicable statutory provisions, as well as non-juridical aspects including mitigating and aggravating circumstances considered by judges. The research also applied comparative legal analysis to identify inconsistencies between court decisions and evaluate whether the sentencing outcomes reflected proportionality, legal certainty, and justice

for victims. To support data organization and reference management, the research utilized Microsoft Word for document processing and Mendeley software for citation and bibliography management. Through this analytical framework, the study aimed to provide a comprehensive understanding of judicial discretion and sentencing disparity within the Indonesian criminal justice system.

RESULT AND DISCUSSION

Disparity in Judges' Decisions in Cases of Persecution Crimes That Result in Serious Injuries

Criminal disparity according to Chaeng Molly's thought quoted by Muladi is the application of different penalties to the same offense or to criminal offenses that are dangerous and comparable (offences of comparable seriousness) without a clear justification. Then according to Jackson quoted by Muladi, without following the legal category, criminal disparities can occur in the punishment of those who commit a crime with the same clear case (Muladi & Nawawi, 2015, pp. 53-54). Criminal disparity can occur in several categories, namely disparities between the same criminal acts, disparities between criminal acts that have the same level of seriousness, criminal disparities imposed by one panel of judges, and disparities between crimes imposed by different panels of judges for the same crime (Hamzah, 2021, pp. 101-102).

A disparity is a difference or inconsistency that occurs between two or more things that are supposed to be the same or similar. In the legal context, especially in judges' decisions, the disparity in verdicts is the difference in results or verdicts handed down by judges in cases that have similar or similar legal characteristics or elements. The phenomenon of judicial disparity is a serious challenge to fair and consistent law enforcement in Indonesia, where there are unjustifiable differences in the imposition of criminal sanctions on similar cases with an equal level of seriousness, without adequate justification (Salim, 2025). In the context of criminal acts of persecution that result in serious injury, the main juridical basis is Article 351 Paragraph (2) of the Criminal Code (KUHP), which threatens the perpetrator with a maximum prison sentence of five years (Appihi Team, 2024). This delinquency is classified as a material crime, so substantive justice depends on proving the causal relationship between the defendant's actions and the consequences caused, namely 'serious injury' (Anggara, 2024), the definition of which is clarified by Article 90 of the Criminal Code, including conditions such as danger of death, severe disability, or loss of organ function. Although the legal basis is clear, the inconsistency of the resulting judgment often harms the principles of legal certainty (*rechtszekerheid*) and substantive justice sought.

The main root of this disparity is structural, centered on the Indonesian criminal law system that tends to adhere to the determination of maximum criminal threats without a strict minimum penalty (Laia, Sumiadi, & Saputra, 2025, pp. 483-500). The absence of this minimum limit gives judges very broad discretion, which freedom, although intended to seek individual justice in each case, often leads to subjective and non-uniform judgments (Azzah, 2025). In assessing the severity of the crime, judges are required to balance the legal objectives according to Gustav Radbruch: justice, certainty, and utility. However, when judges focus too much on the aspect of individual (subjective) benefits or justice based on caustic considerations,

consistency (legal certainty) is often ignored, thus creating a sense of injustice in the eyes of the public and justice seekers.

Comparative analysis of Article 351 Paragraph (2) of the Criminal Code which reads; "If the act results in serious injury, the guilty person is threatened with imprisonment for a maximum of five years" and Article 466 Paragraph (2) of Law No. 1 of 2023 which reads; If the act as intended in paragraph (1) results in serious injury, it shall be punished with imprisonment for a maximum of 5 (five) years. This shows that there is substantial correspondence in establishing a maximum penalty of five years in prison for criminal acts of persecution that result in serious injury, but crucially does not require a minimum penalty. The absence of this minimum of punishment juridically gives birth to extensive judicial discretion, allowing judges to operationalize criminal individualization across a very broad spectrum. The direct consequence of this unregulated discretion is the emergence of disparities in verdicts, where the determination of the weight of sanctions becomes highly dependent on the judge's interpretation and subjective assessment of non-juridical factors such as the defendant's good faith, restitution to the victim, or the status of recidivism whose weight is not measured by default. Although the National Criminal Code has introduced the mandate of the Sentencing Guidelines (Article 56) as an instrument to eliminate subjectivity, the main challenge remains in the implementation of the framework in order to limit the flexibility of sanctions and ensure proportionality and judicial accountability, so that legal consistency can be achieved amid the flexibility of statutory norms.

In addition to juridical considerations related to proving the element of delicacy, non-juridical factors play a dominant role in influencing the judge's discretion (Fernandes, Madjid, & Fahmiron, 2024, p. 123). These factors include the defendant's subjective condition such as polite attitude and sincere remorse during the trial, socio-economic background, and peaceful efforts or restitution to the victim as the implementation of restorative justice, which is often considered a strong mitigating factor (Sang Fajar, 2025, p. 65). On the other hand, aggravating factors such as the motive of the heinous crime, the impact of permanent injury, and most crucially, recidivism status (repetition of criminal acts) should be the main determinants in increasing the weight of the crime imposed (Fernandes, Madjid, & Fahmiron, 2024, p. 133). However, in practice, the assessment of the weight of each of these factors varies greatly from one panel of judges to another, resulting in disproportionate verdicts.

The disparity in this verdict can be clearly illustrated through a comparison of two cases of serious injury persecution that occurred at the Palangkaraya District Court in 2025. Case I, Decision Number 97/Pid.B/2025/PN Plk, involves the Defendant Muhammad Ryan Firdaus. This case is classified as serious because the victim suffered a stab wound to the back that penetrated the abdominal cavity, which according to the criteria of Article 90 of the Criminal Code is classified as a serious injury because it has the potential to "bring a fatal danger". More incriminatingly, the defendant Muhammad Ryan Firdaus was proven to have the status of a recidivist, a legal fact that should result in a much heavier crime as an effort to prevent the repetition of the crime (special deterrence). However, despite the high level of threat to the victim's life and the Defendant's recidivism status, the Public Prosecutor (JPU) in contrast only demanded a prison sentence of 2 (two) years, a very low figure and not proportional to the level of danger of life-threatening crimes and the Defendant's criminal history. In addition, the

judge's decision in the form of a criminal sentence of 1 year and 6 months is considered much lighter than the JPU's demands.

The disparity becomes even more pronounced when compared to case II, Decision Number 175/Pid.B/2025/PN Plk, which involves the defendant Davy Anak Dari Sakaino. The victim in this case suffered a fracture of the lower left arm, which was classified as a serious injury due to disability and functional impairment. For this case, the prosecutor demanded a prison sentence of 4 (four) years, and the panel of judges sentenced him to imprisonment for 3 (three) years and 6 (six) months. A comparison between these two cases shows a striking disparity in the application of legal standards. If it is assumed that the judge's decision for case I imposes a prison sentence of 1 year and 6 months, then there is a difference in punishment of up to 2 years lighter than case II, even though case I involves a recidivist defendant with more life-threatening injuries. This imbalance clearly shows the dominant role of non-judicial factors in case I, which is either in the form of young age as another mitigating factor, which succeeds in neutralizing the incriminating weight of the facts of recidivism and danger of death.

The juridical-philosophical implications of this disparity are enormous. Inconsistent verdicts for similar cases, especially those involving different assessments of aggravating factors as serious as recidivism, directly undermine the credibility of judicial institutions. When society sees disproportionate punishments where the repetition of crimes and threats to life is valued less than functional defects, the sense of justice is not met, and the purpose of punishment to provide a general deterrence effect is weakened. The judge, who is responsible for the logical ratio decidendi (reasons for the dismissal), must transparently explain why certain mitigating factors have the power to defeat the incriminating facts, especially in the context of recidivism, in order to maintain the accountability of the verdict (Anggara, 2024).

In order to address the disparities arising from excessive discretion, the modern legal literature advocates the need to reform the Sentencing Guidelines system in Indonesia (Laia, Sumiadi, & Saputra, 2025, pp. 483-500). These guidelines do not aim to eliminate the independence of judges, but rather to create measurable and recommended sentencing ranges for each category of crime and severity (e.g., establishing a higher and mandatory sentencing range if recidivism or life-threatening injuries are present). In addition, increased transparency in the writing of legal considerations (ratio decidendi) should be affirmed, requiring judges to explicitly and measurably explain why certain non-judicial factors (e.g. peace) have far greater weight than burdensome factors (e.g. recidivism and mortality). Strengthening the consistency of jurisprudence by the Supreme Court is also very necessary to ensure that the judge's discretion is always within the corridor of proportionality and legal accountability (Simanungkalit, 2021).

Thus, the case of disparity in criminal acts of persecution that result in serious injuries, especially involving recidivist defendants such as Muhammad Ryan Firdaus, confirms that the judge's discretion is currently too broad and vulnerable to unbalanced subjective judgments (Laia et al., 2025). To ensure that justice is not only perceived individually but also reflected in institutional consistency, reform of the penal system through clear guidelines and strengthening transparency in legal considerations is an absolute step. Only then can the courts guarantee the proportionality of sentences and restore public confidence in the rule of law that is fair and consistent.

Judge's Considerations in Sentencing in Criminal Cases of Persecution Resulting in Serious Injuries

The judge's consideration (*ratio decidendi*) is the heart of a court decision, becoming the rational and juridical foundation that justifies the imposition of criminal sanctions. In the case of criminal acts of persecution that result in serious injury as regulated in Article 351 Paragraph (2) of the Criminal Code, this consideration is divided into two: juridical and non-juridical considerations, both of which must work together to achieve the legal triad: justice (*gerechtigheit*), certainty (*rechtszekerheid*), and utility (*zweckmässigkeit*). Article 351 Paragraph (2) of the Criminal Code stipulates a maximum prison sentence of five years. This vast space of discretion requires judges to be careful in interpreting the facts and assigning criminal weight, which in turn often poses challenges in achieving consistency.

Juridical considerations begin with proving the elements of delicacy. In the case of severe persecution, the main focus is on the fulfillment of the element of serious injury and its causal relationship with the defendant's actions. The definition of serious injury must be in accordance with the criteria of Article 90 of the Criminal Code, such as "causing a fatal danger," "losing one of the five senses," or "having a major disability". This proof is absolutely based on valid evidence, especially *Visum et Repertum*, which is the objective basis of the judge to qualify the defendant's actions. If the elements of the offense are legally and convincingly proven, then the judge will move to the stage of criminal consideration.

The stage of determining criminal sanctions involves non-juridical considerations, which are traditionally divided into mitigating factors and aggravating factors. Mitigating factors often include a sincere confession of guilt and remorse, a courteous attitude during the trial, a good curriculum vitae, and most importantly the existence of peace or restitution to the victim. On the other hand, aggravating factors include the level of heinous acts, permanent impact on the victim, the way the crime is committed, and the most substantial is the recidivism status or repetition of the crime. The balance between these two factors determines whether the sentence imposed will be close to the minimum or maximum limit.

An in-depth analysis can be seen in Decision Number 97/Pid.B/2025/PN Plk showing that the Panel of Judges stated that the defendant was proven to have committed a criminal act of persecution that resulted in serious injuries as stipulated in Article 351 paragraph (2) of the Criminal Code, based on the facts of the trial and *visum et repertum* which described stab wounds penetrating into the abdominal cavity and serious injuries that threatened the victim's life. However, the Panel of Judges sentenced the defendant to 1 year and 6 months in prison, which was lighter than the Public Prosecutor's demand of 2 years, on the grounds of mitigating the defendant's confession and remorse as well as a request for leniency before the trial, although the judge also noted that the defendant was a recidivist in the sharp weapons case which juridically became a criminal aggravating circumstance. Thus, the discretion of the judge emphasizes more on reformative approaches and coaching for defendants, who are considered young and have the potential to improve themselves.

In contrast, Decision Number 175/Pid.B/2025/PN Plk affirms the fulfillment of the elements of Article 351 paragraph (2) of the Criminal Code based on trial evidence, but medical facts show more serious consequences in the form of broken arm bones to permanent functional impairment and the need for follow-up surgery, which has an impact on the victim's ability to earn a living. The Panel of Judges considered that there were no significant mitigating factors

from the defendant, so the focus of the punishment was directed to the deterrent effect, community protection, and justice for the victim, which made the prison sentence imposed heavier than in Decision Number 97/Pid.B/2025/PN Plk. Thus, the judge's pressure point in this decision was not on the development of the perpetrator, but on the proportionality of the crime and the protection of the interests of the victim.

The substantial difference between the two decisions lies in the assessment of the aggravating and mitigating circumstances. Decision No. 97/Pid.B/2025/PN Plk. includes recidivism status as an aggravating circumstance, but still prioritizes mitigating considerations in the form of the defendant's remorse and a request for leniency so that the weight of the sentence decreases. Meanwhile, in Decision Number 175/Pid.B/2025/PN Plk, the aggravating circumstances have a dominant weight because the consequences of the criminal act cause permanent physical loss and socio-economic losses for the victim, so the judge ignores the mitigating circumstances. This difference in the weighting of considerations creates a disparity in punishment, even though the two defendants are tried on the same article.

From a normative perspective (legal basis), both decisions are in accordance with Article 351 paragraph (2) of the Criminal Code and the rules of criminal consideration based on the balance of burdensome and mitigating circumstances. However, when analyzed using integrative sentencing theory (*verenigings theorie*) which combines elements of retribution, prevention (*preventive*), and coaching (reformative), it can be seen that each decision emphasizes a different purpose of punishment (Arief, 2017, p. 45). From the perspective of justice for victims, the assessment of each verdict shows significant differences. In Decision Number 175/Pid.B/2025/PN Plk, heavier punishment can be said to be closer to victim justice because the judge gave greater weight to the retributive theory that emphasizes the importance of commensurate retribution, as well as the theory of restorative justice, especially when considering the physical, psychological, and social impacts in the form of functional disabilities and loss of the ability to work. Thus, punishment is in line with the principle of proportionality of consequences and protection of the dignity of the victim, as emphasized in the theory of victim-oriented justice (Muladi, 2020, p. 82).

On the other hand, in Decision Number 97/Pid.B/2025/PN Plk, a sentence of 1 year and 6 months even though the defendant is a recidivist can be considered less to restore justice for the victim. Judging from the theory of punishment, this verdict is more inclined to a reformative theory that prioritizes the development and self-improvement of the perpetrator rather than appropriate retribution or community protection. In the perspective of Radbruch's justice (justice, certainty, utility), this verdict emphasizes the aspect of utility for the perpetrator, while the value of justice for the victim is less fulfilled. The victim suffered life-threatening stab wounds and did not receive restitution or apologies directly from the perpetrator, but these factors were not used as an incriminating basis by the judge (Sudarto, 2015, p. 127).

From the perspective of justice, the comparison of the two judgments shows that the application of punishment by judges is not only oriented towards fulfilling the elements of delicacy, but also on the purpose of punishment chosen by the judge based on the theory adhered to. Decision Number 97/Pid.B/2025/PN Plk focuses more on rehabilitation theory and ignores the weight of special preventive theory, which should be considered considering the perpetrator's recidivism status. On the contrary, Decision Number 175/Pid.B/2025/PN Plk is closer to the retributive-preventive theory, which emphasizes proportional retribution and

community protection by considering the physical, psychological, and social suffering experienced by the victim. Thus, there are fundamental differences in theoretical orientation that result in disparities in verdicts (Hamzah, 2019, p. 65).

In an effort to achieve substantial justice, especially in cases of persecution that cause serious injury (Article 351 Paragraph (2) of the Criminal Code), the judge's consideration must be based on the Integrative Criminal Theory (*Verenigings Theorie*) (Arief, 2011, p. 210). This theory advocates a synthesis between three goals of punishment: retributive (proportionate retribution), preventive (special and general prevention), and reformative (development of perpetrators). The application of this theory requires judges to carry out careful balancing. The retributive element must be given dominant weight when the impact of the crime, as evidenced by *Visum et Repertum*, is permanent or life-threatening; This is to uphold the principle of proportionality and adopt a victim-oriented justice perspective (Meliala, 2015, p. 45). In addition, the preventive element must be significantly improved, especially in the case of recidivism, to protect the interests of the community and ensure a deterrent effect. Meanwhile, the reformative aspect (regret and good faith) should be subordinate or can only be a strong mitigating factor (Mulyadi, 2017, p. 88) if accompanied by real actions of Restorative Justice, namely the fulfillment of restitution or adequate compensation to the victim. Failure to integrate these three elements proportionately, such as overemphasizing reformative on recidivism offenders without restitution, will create sentencing disparities and hurt victims' sense of justice, as the comparison of the above verdicts shows.

Thus, an analysis of the two decisions shows that the disparity in punishment arises not because of the difference in the articles applied, but because of the difference in judges' emphasis on the theory of the purpose of punishment. In Decision Number 97/Pid.B/2025/PN Plk, the judge prioritizes reformative goals, while in Decision Number 175/Pid.B/2025/PN Plk, the judge prioritizes retributive-preventive goals, especially to protect the community and provide justice for victims. This analysis shows that in the Indonesian criminal justice system, judges have a wide discretion as long as their considerations are still within the corridor of recognized criminal theory. According to the author, the imposition of lighter sentences on recidivist defendants than non-recidivist defendants in cases of persecution that results in serious injury is a criminal practice that is contrary to the principles of proportionality, the preventive purpose of criminalization, and the principle of justice for the victim. Recidivism juridically and criminologically shows that previous crimes have failed to provide a deterrent effect, so they must rationally be treated as a significantly aggravating circumstance, rather than neutralized by subjective mitigating factors. The author is of the view that when the recidivism status is not given dominant weight in the punishment, the judge's decision loses the function of special deterrence, weakens the protection of the community, and creates structural injustice for the victim. Recidivist status should not be aligned with normal mitigating factors such as remorse or politeness. In cases of physical violence that results in serious injury, recidivism must automatically shift the crime towards the upper limit of criminal threat. In this context, disparity is no longer just a difference in judges' judgments, but has shifted into normative inconsistencies that hurt the principle of equality before the law.

CONCLUSION

Based on the analysis of the verdicts related to the crime of persecution that resulted in serious injury, it can be concluded that the disparity in judges' decisions is still a fundamental problem in the Indonesian criminal justice system, which can be seen from the inconsistency in considering juridical and non-juridical factors such as recidivism status, the level of seriousness of the violence, the mode of act, the impact of serious injury on the victim, and the peaceful efforts made by the perpetrator. The limitation of the criminal range in Article 351 paragraph (2) of the Criminal Code also narrows the space for judges to impose truly proportionate sentences, resulting in verdicts that substantively do not reflect the principles of justice, legal certainty, and deterrent effect. To improve the consistency and quality of punishment, it is necessary to establish more detailed national sentencing guidelines to reduce the interpretive gap between the purpose of perpetrator development and victim protection, strengthen the standards of serious injury assessment through *visum et repertum*, increase the capacity of judges in understanding modern criminal theory, and update regulations related to the flexibility of criminal threats to accommodate variations in facts and the level of seriousness of the act. In addition, periodic evaluation of the verdict and increasing the transparency of judges' considerations need to be carried out to ensure that the verdicts handed down are more measurable, objective, and acceptable to the public as a form of upholding the principle of equality before the law.

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